



development, management information systems, public works engineering, traffic, waste water treatment, fire department deputy chiefs, parks and recreation, refuse collection system, street department and legal department" as certified May 2, 1991 followed by an agreed upon Modification Petition filed December 14, 1992 whereby the parties agreed to exclude deputy fire chiefs and to include Accountant II, System Application Analyst I, II, III and IV, contract specialist and housing rehabilitation coordinator positions. The United Auto Workers, Local 2232 (Union) filed exceptions to the proposed changes on April 15, 1993. This matter was heard by the undersigned hearing officer on June 17, 1993. The parties had until the close of business on July 1, 1993 to complete any post-hearing submittals.

#### FINDINGS OF FACT

1. The City of Nashua is a "public employer" within the meaning of RSA 273-A: 1 X.
2. United Auto Workers, Local 2232 is the duly certified bargaining agent for employees of the City in the job categories enumerated in the "Background" portion of this document.
3. The composition of the original bargaining unit in 1991 was the product of an agreement reached by the parties prior to the certification election which was held on May 2, 1991.
4. The laboratory supervisor monitors effluent discharges, completes and forwards federal forms, supervisors subordinates (outside of this unit), and screens applicants and recommends for hiring (two steps below the final authority of the Board of Public Works). There is no evidence these duties have undergone any change since the filing of the original certification petition on October 26, 1990. The sole incumbent in this position exhibited no self-felt community of interest with other unit members and is not dues paying member of the union.
5. The junior chemists (2) work earlier hours than some other unit members, from 6:45 a.m. to 2:45 p.m. These positions are responsible for chemical analysis and reports. There is no evidence their duties, responsibilities or working conditions have changed since the filing of the 1990 certification petition and the date of these proceedings. At least one of the junior chemists expressed no self-felt

community of interest with other unit employees, specifically City Hall employees.

6. The senior chemist works the same schedule as the junior chemists and is responsible for laboratory tests, computer work and certain aspects of plant operations. There is no evidence that the duties, responsibilities or working conditions of the senior chemist have changed since the filing of the 1990 certification petition and the date of these proceedings. The sole incumbent in this position exhibited no self-felt community of interest with other unit employees.
7. The environmental engineer monitors industries as to their discharges into the sewer system and maintains familiarity with hazardous materials (HAZMAT) precautions, the use of protective equipment and contingency plans. There is no evidence that the duties, responsibilities or working conditions of the environmental engineer have changed since the filing of the 1990 certification petition and the date of these proceedings. The sole incumbent in this position exhibited no self-felt community of interest with other unit employees.
8. Waste water treatment operations is part of the Board of Public Works (BPW). The other two components are Parks and the Landfill. The organizational structure of the BPA has not changed since the original certification petition in 1990 and the date of these proceedings.
9. The Superintendent of the Waste Water Treatment Plant testified that there has been no change in the work duties and responsibilities of the four (4) petitioned-for job categories in the Modification Petition during the last two years.
10. Bargaining unit members employed at the Waste Water Treatment Plant perform specialized functions not performed by other city departments. There is no commonality of functions between the Waste Water Treatment plant and other City departments and vice versa. Such "uniqueness" is not uncommon in professional bargaining units.
11. The various City departments having employees in this bargaining unit are located in numerous locations throughout the City. It is not uncommon for employees in this bargaining unit to be

geographically separated from other employees

in the same bargaining unit, e.g. at City Hall, Streets, Landfill, Parks and Recreation, and Waste Water Treatment facilities.

12. The City and the Union negotiated and agreed upon changes to the composition of the original bargaining unit as represented by the joint Modification Petition filed on December 24, 1992. The four positions under consideration in the pending Modification Petition were not part of those negotiations. Likewise, no effort was made to exclude the four positions under consideration in these proceedings from the original bargaining unit when it was formed and certified on May 2, 1991.
13. The parties reached tentative agreement on a contract on May 12, 1993; however, the disposition of the four positions under consideration in these proceedings was not discussed or resolved in those negotiations. The lack of closure on this issue was known to the parties.
14. There is no evidence that there was any quid pro quo supporting the settlement in this case in exchange for agreement on or resolution of the issue of the four positions under consideration in these proceedings.

#### DECISION AND ORDER

The one consistent theme running throughout the four positions under consideration herein is the fact that the duties, responsibilities and working conditions of the incumbents did not change between the date of the original proceedings, a product of mutual agreement, and the date of these proceedings. Rule 302.05 (a) permits modifications to bargaining units "where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed." That has not happened. The petitioner asserts that the change in circumstances is manifest by the way in which the petitioned-for incumbent employees observed the union operating. Notwithstanding that this would be a completely subjective appraisal, it does not appear to be substantiated by the testimony. Waste Water personnel, including some of the incumbents herein, were invited to and did participate in the collective bargaining process or portions thereof. Non-participants were even sent copies of the negotiated contract and membership cards in the event they wanted to participate in the

ratification process.

Rule 302.05 (a) also provides that a modification petition may be denied if it "attempts to modify the composition of a bargaining unit negotiated by the parties and the circumstances alleged to have changed actually changed prior to negotiations on the collective bargaining agreement presently in force." Given that the tentative agreement did not occur until May 12, 1993 and the petition was filed April 1, 1993, it would appear that this provision is applicable.

Lastly, RSA 273-A:8 I speaks to the need for a community of interest. To the extent those requirements were satisfied in 1991, they remain satisfied today, with the possible additional consideration that the parties have now also demonstrated that they have a "history of workable and acceptable collective negotiations." Conditions of employment and organizational functioning remain unchanged. RSA 273-A:8 I (a) and (d). As for the conspicuous lack of self-felt community of interest referenced in the findings, the incumbents have found their own remedy -- don't belong and don't participate. It would be imprudent to exclude their successors from the protections and entitlements of RSA 273-A merely because of the feelings of the current incumbents.

The petition must be, and hereby is, DENIED.

So ordered.

Signed this 5th day of August, 1993.



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PARKER DENACO  
HEARING OFFICER